

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MELINDA DAUBENSCHMIDT,

Plaintiff,

v.

No. CIV-12-1222 JCH/LAM

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on Plaintiff's *Motion for Attorney Fees and Costs Pursuant to Equal Access to Justice Act, With Memorandum in Support* (Doc. 26) in the amount of \$5,562.12 for attorney fees and \$350.00 in costs. In her response (Doc. 27), the Commissioner does not object to Plaintiff's request for attorney fees in this amount. The Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised **FINDS** that Plaintiff's motion is well-taken and will be **GRANTED**.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's *Motion for Attorney Fees and Costs Pursuant to Equal Access to Justice Act, With Memorandum in Support* (Doc. 26) is **GRANTED**, and Plaintiff Melinda Daubenschmidt is authorized to receive **\$5,912.12** for payment to her attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, he shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2528 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE